

REMARKS

This reply is fully responsive to the Final Office Action dated August 03, 2004, and is filed within three- (3) months following the mailing date of the Final Office Action.

Claims Status Summary:

Claims 1 - 6 are pending in the application.

Claims 1 - 6 were finally rejected under 35 U.S.C. 103(a) as being unpatentable over Boesch et al. (US 6,092,053).

I. Final Rejection, Premature:

MPEP 706.07(a) states that "Under present practice, second or any subsequent actions on the merits shall be final, **except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims** nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." [Emphasis added].

In the Response dated June 24, 2004, the Applicant did **not** amend any claims to necessitate the introduction of a new ground of rejection (using Boesch et al. reference) by the current Office Action (August 03, 2004). In addition, the Applicant did **not** submit any information in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR

1.17(p). Therefore, the Applicant respectfully requests reconsideration of the finality of the Office Action mailed on August 03, 2004, and the withdrawal thereof in accordance with the present practices of the United States Patent and Trademark Office. Please also see MPEP 706.07(c) and MPEP 706.07(d).

II. Claims Rejections - 35 USC §103(a):

The Final Office Action rejected Claims 1 - 6 under 35 U.S.C. 103(a) as being unpatentable over Boesch et al. (6,092,053).

Furthermore, if such assertions by the Official Notice in the Final Office Action is based on facts within the personal knowledge of the Examiner, it is respectfully requested that an affidavit from the Examiner be provided to Applicant, stating specifically the facts that support such assertions that show as common knowledge in the art of commerce the claimed *"... establishing a product pick-up network in electronic communication with a plurality of separately located product pick-up locations; and completing a purchase transaction by the purchaser entering a locality identifier to retrieve options from participating merchants for payment and pick-up in a preferred locality."* Furthermore, as required by claim 3 of the present application, the evidence from the Office must also show as common knowledge in the art of commerce the claimed *"...said completing step includes releasing selected pre-approved product to the purchaser upon presentation of identifying password, ID form and e-mail receipt in order to match*

the purchaser with the selected pre-approved product, purchase transactions and participating merchant."

Applicant respectfully requests that if the Office continues to maintain the assertions made under Official Notice, then the finality of the Office Action be withdrawn to provide the Applicant the opportunity for an appropriate response. MPEP 2144.03. Nevertheless, for the purposes of this response, Applicant respectfully submits that the claims as written are not obvious over the Official Notice taken by the Final Office Action, and in fact, it is not even understood to which claim is the literal language of the Official Notice directed so that Applicant can respond appropriately.

Please note that the technology taught by the present application is highly technical, related to e-commerce, requiring highly skilled computer, networking, business personnel, and therefore a true esoteric technology. MPEP 2144.03 states that "Assertions of technical facts in areas of esoteric technology must always be supported by citation of some reference work" and "allegations concerning specific 'knowledge' of the prior art, which might be peculiar to a particular art should be supported."

Regardless, Applicant respectfully requests the withdrawal of the rejection of claim 1 under 35 USC 103 because Boesch et al. do not render as obvious the claimed limitations for all the aforementioned reasons. Hence, Applicant

respectfully submits that claim 1 – 6 is allowable over the cited reference and solicits reconsideration and allowance of this claim.

“A system and method for merchant invoked electronic commerce” is broadly interpreted to overlap into Applicant’s “A System For Preferred Location Pick-up For Electronically Purchased Items”.

Basically, with all due respect the only common themes presented here are electronic commerce. Boesch refers to a system who’s primary focus is on retrieving data from a purchasers previous transactions so they do not have to enter the same information every time they visit a merchant electronically.

Whereas, Applicant’s focus is on the electronic reservation and purchase of products for physical pick-up by a purchaser. Whether the information is pre-filled or not is not claimed by Applicant. Further more Applicant’s system specifically enables merchants the ability to manipulate terms and conditions to entice a real time sale of a product(s). These core values do not overlap in any way and we respectfully ask for the examiner to show us where they do to prevent the allowance of distinction between the two.

I am also requesting tolerance of the obvious lack of legal largesse in this answer as unfortunately I, (Applicant), have to exercise power of attorney previously granted to Roger Marrs, Attorney at Law due to financial restraints.



CONCLUSION

It is respectfully submitted that the application is now in condition for allowance, and an early notification of the same is requested. If it is believed that a telephone interview will help further the prosecution of this case, Applicant respectfully requests that he be contacted at listed telephone number.

Respectfully submitted,
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